



भारत का राजपत्र

The Gazette of India



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इस भाग में खिल्ली पृष्ठ संलग्न की जाती है जिससे इस भाग संलग्न के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed
as a separate compilation

LOK SABHA

The following Bills were introduced in Lok Sabha on the 2nd March, 1978:—

BILL NO. 17 OF 1978

A Bill to provide for the use of ears of deceased persons for therapeutic purposes and for matters connected therewith.

Be it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Ear Drums and Ear Bones (Authority for Use for Therapeutic Purposes) Act, 1978.

(2) It extends to the whole of the Union territory of Delhi.

(3) It shall come into force on such date as the Administrator may, by notification in the Official Gazette, appoint

Short title, extent and commencement.

2. In this Act, unless the context otherwise requires,—

(a) "Administrator" means the administrator of the Union territory of Delhi appointed by the President under article 239 of the Constitution;

Definitions.

(b) "ear" includes ear drums and ear bones;

(c) "near relative", in relation to a deceased person, means any person related to him as spouse, parent, son, daughter, brother or sister and includes any other person who is related to him—

- (i) by lineal consanguinity within three degrees or by collateral consanguinity within six degrees; or
- (ii) by marriage with any of the relatives aforesaid.

Explanation.—The expressions "lineal consanguinity" and "collateral consanguinity" shall have the meanings respectively assigned to them in the Indian Succession Act, 1925, and degrees of relationship shall be computed in the manner laid down in that Act;

39 of 1925.

(d) "prescribed" means prescribed by rules made under this Act;

(e) "registered medical practitioner" means a medical practitioner who possesses any recognised medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956, and who is enrolled on a State Medical Register as defined in clause (k) of that section.

102 of 1956.

Authority for removal of ears of deceased persons.

3. (1) If any person had, either in writing or orally, in the presence of two or more witnesses (at least one of whom is a near relative of such person) unequivocally authorised, at any time before his death, the use of his ears, after his death, for therapeutic purposes (such person being hereafter in this sub-section referred to as the donor), the person lawfully in possession of the dead body of the donor shall, unless he has any reason to believe that the donor had subsequently revoked the authorisation aforesaid, grant to a registered medical practitioner, all reasonable facilities for the removal, for therapeutic purposes, of the ears from the dead body of the donor.

(2) Where no such authorisation as is referred to in sub-section (1) was made by any person before his death but no objection was also expressed by such person to his ears being used after his death for therapeutic purposes, the person lawfully in possession of the dead body of such person may, unless he has reason to believe that any near relative of the deceased person has objection to the deceased person's ears being used for therapeutic purposes, authorise the removal of the ears of the deceased person for their use for therapeutic purposes.

(3) The authority given under sub-section (1) or, as the case may be, under sub-section (2), shall be sufficient warrant for the removal, for therapeutic purposes, of the ears from the body of the deceased person; but no such removal shall be made by any person other than a registered medical practitioner, who had satisfied himself, before such removal, by a personal examination of the body from which ears are to be removed, that life is extinct in such body.

Removal of ears not to be authorised in certain cases.

4. (1) No facilities shall be granted under sub-section (1) of section 3 and no authority shall be given under sub-section (2) of that section for the removal of ears from the body of a deceased person, if the person required to grant such facilities, or empowered to give such authority, has reason to believe that an inquest may be required to be held in relation to such body in pursuance of the provisions of any law for the time being in force.

(2) No authority for the removal of ears from the body of a deceased person shall be given by a person to whom such body has been entrusted solely for the purpose of interment, cremation or other disposal.

5. (1) In the case of a dead body lying in a hospital or prison and not claimed by any of the near relatives of the deceased person within sixteen hours from the time of the death of the concerned person, the authority for the removal of the ears from the dead body which so remains unclaimed may be given, in the prescribed form, by the person in charge, for the time being, of the management or control of the hospital or prison or by an employee of such hospital or prison, authorised in this behalf by the person in charge of the management or control thereof.

Autho-
rity for
removal
of ears in
case
of un-
claimed
bodies
in hospital
or prison.

(2) No authority shall be given under sub-section (1) if the person empowered to give such authority has reason to believe that any near relative of the deceased is likely to claim the dead body even though such near relative has not come forward to claim the body of the deceased within the time specified in sub-section (1).

Explanation.—For the purposes of this section, "hospital" includes a nursing home, medical or teaching institution for therapeutic purposes or other like institution.

6. Where the death of a person is caused by accident or any other unnatural cause, and his dead body has been sent for post mortem examination for medico-legal purposes, the person competent under this Act to give authority for the removal of the ears from such dead body may, if he has reason to believe that the ears will not be required for any medico-legal purpose, authorise the removal for therapeutic purposes, of the ears of such deceased person provided that he is satisfied that the deceased person had not expressed, before his death, any objection to his ears being used for therapeutic purposes after his death or, where he had granted an authority for the use of his ears for therapeutic purposes after his death, such authority had not been revoked by him before his death.

Autho-
rity for
removal
of ears
from
bodies
sent for
post-
mortem
examina-
tion for
medico-
legal pur-
poses.

7. After the removal of the ears from the body of the deceased person, the registered medical practitioner shall take such steps for the preservation of the ears so removed as may be prescribed.

Preserva-
tion of
ears re-
moved
from
dead
bodies.
Savings.

8. (1) Nothing in the foregoing provisions of this Act shall be construed as rendering unlawful any dealing with the body or with any part of the body of a deceased person if such dealing would have been lawful if this Act had not been passed.

(2) Neither the grant of any facility or authority for the removal of ears from the body of a deceased person in accordance with the provisions of this Act nor the removal of ears from the body of a deceased person in pursuance of such authority shall be deemed to be an offence punishable under section 297 of the Indian Penal Code.

Protection of action taken in good faith.
Power to make rules.

9. No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

10. (1) The Administrator may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form in which removal of ears from unclaimed bodies may be authorised, as required by section 5;

(b) the preservation of removed ears, as required by section 7;

(c) any other matter which is required to be or may be prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

Transplantation of ear drums and ear bones has been started at the Lok Nayak Jai Prakash Narayan Hospital, New Delhi, with encouraging results. The benefit of this facility cannot be made available to all persons who need it unless ear drums and ear bones are available in sufficient quantities. The Bill, therefore, seeks to provide for the donation by a person of his ears for therapeutic purposes. The Bill also empowers the person in charge of a dead body to donate the ears of the deceased person except where the deceased person had, before his death, objected to such donation or if any near relative of the deceased person objects to such donation. The person in charge of a hospital or prison or an authorised employee thereof has also been empowered to give consent to the removal of the ears of a deceased person if the dead body of such person has not been claimed by his near relative within sixteen hours of the death of such person. However, it is provided in the Bill that authority for removal of ears, in the case of an unclaimed body shall not be given where the person empowered to give such authority has reason to believe that any near relative of the deceased is likely to claim the dead body, even though no such near relative has come forward to claim the body of the deceased within the said period of sixteen hours.

2. The Bill also seeks to give the necessary protection to the persons acting in good faith in accordance with the provisions thereof.

NEW DELHI;

The 24th December, 1977.

RAJ NARAIN.

FINANCIAL MEMORANDUM

Clause 10 of the Bill empowers the Administrator to make rules. It is intended to make suitable rules for giving publicity to the provisions of the legislation so as to attract donations of ears. It is also proposed to make rules for the creation of an ear bank and for the registration of names of persons willing to donate ears. It is estimated that these provisions would involve a non-recurring expenditure of Rs. 20,000 and a recurring expenditure of Rs. 40,000 per year.

2. The provisions of the Bill do not involve any other expenditure of a recurring or a non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 10 of the Bill empowers the Administrator to make rules for carrying out the provisions of the Bill. The matters in respect of which rules may be made relate to the form in which removal of ears of unclaimed bodies may be authorised, preservation of removed ears, the manner in which publicity may be given to the provisions of the legislation and any other matter which is required to be or may be prescribed.

2. The matters in respect of which rules may be made are of administrative detail and procedure, and as such, the delegation of legislative power is of normal character.

BILL No. 16 OF 1978

A Bill to provide for the use of eyes of deceased persons for therapeutic purposes and for matters connected therewith.

Be it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

Short title,
extent
and com-
mencement.

1. (1) This Act may be called the Eyes (Authority for Use for Therapeutic Purposes) Act, 1978.

(2) It extends to the whole of the Union territory of Delhi.

(3) It shall come into force on such date as the Administrator may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "Administrator" means the Administrator of the Union territory of Delhi appointed by the President under article 239 of the Constitution;

(b) "near relative", in relation to a deceased person, means any person related to him as spouse, parent, son, daughter, brother or sister and includes any other person who is related to him—

(i) by lineal consanguinity within three degrees or by collateral consanguinity within six degrees; or

(ii) by marriage with any of the relatives aforesaid.

Explanation.—The expressions “lineal consanguinity” and “collateral consanguinity” shall have the meanings respectively assigned to them in the Indian Succession Act, 1925, and degrees of relationship shall be computed in the manner laid down in that Act;

(c) “prescribed” means prescribed by rules made under this Act;

(d) “registered medical practitioner (ophthalmic)” means a medical practitioner who possesses any recognised medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956, and possesses a post-graduate qualification in Ophthalmology or a certificate showing that he had received training in enucleation procedure in the Ophthalmic Department of a hospital or teaching institution for therapeutic purposes approved by the Administrator in this behalf and who is enrolled on a State Medical Register as defined in clause (k) of the said section.

3. (1) If any person had, either in writing or orally, in the presence of two or more witnesses (at least one of whom is a near relative of such person) unequivocally authorised, at any time before his death, the use of his eyes, after his death, for therapeutic purposes (such person being hereafter in this sub-section referred to as the donor), the person lawfully in possession of the dead body of the donor shall, unless he has any reason to believe that the donor had subsequently revoked the authorisation aforesaid, grant to a registered medical practitioner (ophthalmic) all reasonable facilities for the removal, for therapeutic purposes, of the eyes from the dead body of the donor.

Authority
for
removal
of eyes of
deceased
persons.

(2) Where no such authorisation as is referred to in sub-section (1) was made by any person before his death but no objection was also expressed by such person to his eyes being used after his death for therapeutic purposes, the person lawfully in possession of the body of the deceased person may, unless he has reason to believe that any near relative of the deceased person has objection to the deceased person's eyes being used for therapeutic purposes, authorise the removal of the eyes of the deceased person for their use for therapeutic purposes.

(3) The authority given under sub-section (1) or, as the case may be, under sub-section (2), shall be sufficient warrant for the removal, for therapeutic purposes, of the eyes from the body of the deceased person; but no such removal shall be made by any person other than a registered medical practitioner (ophthalmic) who had satisfied himself, before such removal, by a personal examination of the body from which eyes are to be removed, that life is extinct in such body.

4. (1) No facilities shall be granted under sub-section (1) of section 3 and no authority shall be given under sub-section (2) of that section for the removal of eyes from the body of a deceased person if the person required to grant such facilities, or empowered to give such authority, has reason to believe that an inquest may be required to be held in relation to such body in pursuance of the provisions of any law for the time being in force.

Removal
of eyes
not to be
authorised
in certain
cases.

(2) No authority for the removal of eyes from the body of a deceased person shall be given by a person to whom such body has been

entrusted solely for the purpose of interment, cremation or other disposal.

Authority
for remo-
val of eyes
in case
of unclaim-
ed bodies
in hospital
or
prison.

5. (1) In the case of a dead body lying in a hospital or prison and not claimed by any of the near relatives of the deceased person, the authority for the removal of the eyes from the dead body which so remains unclaimed may be given, subject to the provisions of sub-section (2), in the prescribed form, by the person in charge, for the time being, of the management or control of the hospital or prison or by an employee of such hospital or prison, authorised in this behalf by the person in charge of the management or control thereof.

(2) The authority referred to in sub-section (1) shall not be given except after the expiry of—

(i) half an hour from the time of the death of the concerned person, in cases where no facility for cold storage of the dead body is available in the hospital or prison; or

(ii) two hours from the time of the death of the concerned person, in cases where facility for cold storage of the dead body is available in the hospital or prison.

(3) No authority shall be given under sub-section (1) if the person empowered to give such authority has reason to believe that any near relative of the deceased is likely to claim the dead body even though such near relative has not come forward to claim the body of the deceased within the time specified in clause (i) or, as the case may be, clause (ii) of sub-section (2).

Explanation.—For the purposes of this section, “hospital” includes a nursing home, medical or teaching institution for therapeutic purposes or other like institution.

Authority
for remo-
val of
eyes from
bodies
sent for
post-
mortem
examina-
tion for
medico-
legal
purposes.

6. Where the death of a person is caused by accident or any other unnatural cause, and his dead body has been sent for postmortem examination for medico-legal purposes, the person competent under this Act to give authority for the removal of the eyes from such dead body may, if he has reason to believe that the eyes will not be required for any medico-legal purpose, authorise the removal for therapeutic purposes, of the eyes of such deceased person provided that he is satisfied that the deceased person had not expressed, before his death, any objection to his eyes being used for therapeutic purposes after his death or, where he had granted an authority for the use of his eyes for therapeutic purposes after his death, such authority had not been revoked by him before his death.

Preserva-
tion of
eyes re-
moved
from
dead
bodies.

7. After the removal of the eyes from the body of the deceased person, the registered medical practitioner (ophthalmic) shall take such steps for the preservation of the eyes so removed as may be prescribed.

Savings.

8. (1) Nothing in the foregoing provisions of this Act shall be construed as rendering unlawful any dealing with the body or with any part of the body of a deceased person if such dealing would have been lawful if this Act had not been passed.

(2) Neither the grant of any facility or authority for the removal of eyes from the body of a deceased person in accordance with the provisions of

45 of 1860.

this Act nor the removal of eyes from the body of a deceased person in pursuance of such authority shall be deemed to be an offence punishable under section 297 of the Indian Penal Code.

9. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Protection of action taken in good faith.

10. (1) On the commencement of this Act, the Bombay Corneal Grafting Act, 1957, as in force in the Union territory of Delhi, shall cease to be in force in the Union territory of Delhi:

Cessation of operation of Bombay Act 23 of 1957.

Provided that such cesser shall not affect the previous operation of the enactment aforesaid and anything done or any action taken (including any authority granted, any direction or notice issued) under any provision of such enactment shall, in so far as it is not inconsistent with the provisions of this Act, continue to be in force unless and until superseded by anything done or any action taken under this Act.

(2) Any reference, in the enactment so ceasing to be in force, to any officer, authority or person entrusted with any functions thereunder, shall be construed, where necessary, as a reference to the corresponding officer, authority or person functioning under this Act.

11. (1) The Administrator may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

Power to make rules.

..(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) form in which removal of eyes from unclaimed bodies may be authorised, as required by section 5;

(b) the preservation of removed eyes, as required by section 7;

(c) any other matter which is required to be or may be prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

Modern science has rendered possible the use of eyes of deceased persons for restoring sight to blind persons. It is also possible to conserve the eyes of deceased persons for use at a future date. With a view to taking full advantage of these developments and building up an eye-bank in the Union territory of Delhi, the Bombay Corneal Grafting Act, 1957, was extended to the Union territory of Delhi in 1964 by a notification under the Union Territories (Laws) Act, 1950.

2. Experience of the working of the Act has revealed that it is deficient in certain respects. In the first place, under the Act, eyes can be removed by any registered medical practitioner practising any system of medicine and recognised as a registered medical practitioner under any law for the time being in force in India. The removal and preservation of eyes requires special skill and special facilities. If a person who is not sufficiently qualified removes the eyes, there is a danger of the eyes becoming useless for any purpose. It is, therefore, considered necessary to ensure that only those who qualify as registered medical practitioners under the Indian Medical Council Act, 1956, and who have post-graduate qualifications in ophthalmology or who possess adequate experience and training in enucleation procedure are permitted to remove eyes from the bodies of deceased persons. In the second place, the Bombay Act does not provide for the making of rules and experience has shown that the objects of the Act can be better achieved if it is supplemented, with regard to details, by detailed rules. In the third place, under the Bombay Act, eyes can be removed from bodies lying in certain hospitals or medical or teaching institutions for therapeutic purposes without obtaining the permission of any person. With a view to respecting the wishes of the relatives of the deceased persons concerned and giving them an opportunity to claim the bodies, it is considered appropriate to prohibit the removal of the eyes from the bodies till such time as they do not get damaged and also to wait even beyond that period in cases where there is some possibility of the relatives claiming the bodies.

3. It is intended to avail of the present opportunity to replace the Bombay Act as extended to the Union territory of Delhi by independent legislation which would give effect to the aforementioned proposals.

4. The Bill seeks to give effect to the above objects.

NEW DELHI;

The 30th December, 1977.

RAJ NARAIN.

FINANCIAL MEMORANDUM

Clause 11 of the Bill empowers the Administrator to make rules. It is intended to make suitable rules for giving publicity to the provisions of the legislation so as to attract donations of eyes. Rules will also deal with the facilities for storage of eyes. Though the Bombay Corneal Grafting Act, 1957, which has been in force in the Union territory of Delhi does not provide for the making of rules, the aforementioned matters have been, to some extent, regulated by administrative instructions and facilities have already been created in the Union territory for the storage of eyes. The expenditure in respect of the aforementioned matters is being met from out of the normal budgetary grants for eradication of blindness. Hence, no additional expenditure of a recurring or non-recurring nature over and above the said budgetary grants will be incurred on account of the provisions made in the Bill.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 11 of the Bill empowers the Administrator to make rules for carrying out the provisions of the Bill. The matters in respect of which rules may be made relate to the form in which removal of eyes of unclaimed bodies may be authorised, preservation of removed eyes, the manner in which publicity may be given to the provisions of the legislation and any other matter which is required to be or may be prescribed.

2. The matters in respect of which rules may be made are of administrative detail and procedure, and as such, the delegation of legislative power is of normal character.

AVTAR SINGH RIKHY,
Secretary.